

REMARKS

Applicant respectfully requests the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 112, first paragraph, in view of the above new independent claims 18 and 19 in which the cigarettes are positively claimed.

Applicant respectfully traverses the rejections under 35 U.S.C. § 103(a) based on unpatentability (obviousness) over Draghetti in view of Bohdan alone or further in view of Focke '691, insofar as these rejections may be applied to the proposed new independent claims 18 and 19 and to their dependent claims.

The primary basis for these traversals is the erroneous reliance on the Draghetti/Bohdan combination, at least in so far this combination is applied to the subject matter of the new independent claims 18 and 19.

New independent claim 18 replaces the canceled claims 11 and 17, and new independent claim 19 replaces the canceled claim 16. See the new paragraph a) in claim 18.

1. The now canceled claims 11 and 17 as well as new claim 18 relate to a novel cigarette pack having a polygonal cross-section. As recited in claim 18, marginal regions have a trapezoid-shaped configuration. The material strips arranged at a specific angle to one another have selected dimensions. Furthermore, the claimed angle positions of the strip-like wall regions are of importance.

The shape and dimensions of the pack must be seen in conjunction with the pack contents, namely with a selected formation of the cigarettes. Two features of this formation are important:

- The cigarettes are arranged to form transverse rows so that the cigarettes of one row support one another in the transverse direction,

- the adjacent transverse rows (35, 36) are arranged such that in each case a cigarette in the region of the two angulations (37, 38) lies against the inner side of the pack walls.

In the case of the claimed invention the cigarette group, as the pack's content, is employed to help support the specially designed pack. The pack shape, using relative thin cardboard as the packaging material, is stabilized by the marginal cigarette rows 35, 36 while maintaining the trapezoid-shaped border contour. This is due to the arrangement of marginal cigarettes in the region of the angulations 37, 38, on one hand, to the arrangement of the cigarettes in transverse rows, on the other hand, and finally to the saddle position of the adjacent rows 35, 36. These factors – in conjunction with the overall structure of the cigarette group – result in pack contents which are stable in the transverse direction and which also conform to the shape of the pack not only in a spatial sense but also in terms of its “statics”.

2. The office action has misinterpreted the prior art with respect to the claimed invention.

a) The pack pursuant to WO 02/032786 to Draghetti differs in a number of ways from the claimed pack. An essential design feature is that the Draghetti pack exhibits a plurality of cross-sectional variations along its height. A central region of the pack assumes an octagonal configuration, in principle corresponding in one shape to Applicant's pack. The top and bottom end surfaces, namely the end wall and the base wall, assume a quadrangular or rectangular configuration. Regions of transition are provided between the octagonal section and the quadrangular upper and lower end surfaces.

The Examiner states that it would have been obvious to configure the Draghetti pack with an octagonal contour corresponding to its middle section along its full height. No support for this

statement is provided in the Draghetti specification. At the top of page 2 in the first paragraph, the prior art relating to packs having beveled or rounded pack edges is discussed. One example of this prior art is US 4 753 384 to Focke. Draghetti expressly notes (page 2, under the heading "Disclosure of Invention") that the object of the invention is to provide a pack with a variable cross-section. Clearly, this would not have made it obvious to the person skilled in the art to apply the design of a sub-section of the Draghetti pack to the overall design of a pack.

In light of Applicant's claimed hinge-lid pack, it is of significance that in Draghetti the cigarettes are positioned in the pack in the conventional manner. The cigarette formation derived from Fig. 4 with three longitudinal rows is the typical cigarette formation for conventionally marketed hinge-lid packs. For example, this cigarette formation is also shown in DE 101 35 409 (Fig. 15, Fig. 16, Fig. 17), i.e. in conjunction with a pack which has roof-shaped side walls. Draghetti is obviously of the opinion that, in a pack having a complex sectional shape, it is not possible to alter the formation of the cigarettes as presented in standard packs. In any case, a collar 6 (inner frame) is disposed within the Draghetti pack which – as is common in hinge-lid packs – comprises a collar front wall 45 and transverse collar side tabs 46 (Fig. 4). As can be clearly seen, this collar shape does not conform to the pack contour, thus having the effect of significantly reducing the interior space available for the cigarettes.

b) US 6 832 677 B2 to Bohdan is newly cited. This reference is of interest due to the cigarette formation (shown in Fig. 6) in a cigarette pack. Bohdan provides statements on this in column 3, starting on line 48. It states that the shown configuration is suitable "for entry into an oval cigarette container which is similarly oval shaped to exit portion 60". Bohdan thus teaches that this cigarette formation be employed expressly for an oval cigarette pack, but not for other pack shapes.

This prior art and information correspond to the information provided in EP 0 414 532 A1 (Lamm). The entire specification relates to the production of hinge-lid cigarette packs having an overall oval cross-section (Fig. 1, Fig. 2). Shown in Fig. 15 is a cigarette formation for this type of pack, which matches the disclosure of Bohdan. The Bodhan/Lamm combination merely provides the person skilled in the art with the knowledge that a cigarette formation having transverse rows of two or three cigarettes is the appropriate formation for oval packs.

3. The claimed invention would not have been obvious over the prior art for the following reasons:

a) The pack according to the invention and having the features of independent claims 18 and 19 represents the optimum combination of a cigarette pack of the hinge-lid type with a complex outer contour (octagonal) and pack contents which precisely conform to the pack contour by virtue of the special cigarette formation.

b) The claimed invention creates for the first time an interdependence between a pack's shape and the structure of the cigarette formation as the pack's contents, namely a supporting effect of the cigarettes on the special cross-sectional form of the pack, thus achieving a double effect by adapting the cigarette formation to the volume of the pack and increasing its dimensional stability.

c) The prior art of Draghetti, Bodhan and Lamm (and Focke '691) is clearly different from the claimed invention's combination of features (claim 18). The aforementioned references would, in fact, lead the person skilled in the art in a direction away from the claimed invention: Draghetti discloses a highly complex hinge-lid pack having in part an octagonal cross-

section, yet with the unmistakable indication that the pack as a whole should be configured to have a cross-section that changes its shape along the height of the pack. In terms of the cigarette formation (Fig. 4), it is clear that conventional structures have been applied. Bodhan discloses a formation of the cigarette group patent but only with the express reference to an oval shape of the cigarette pack. Lamm confirms that the selected structure of the cigarette formation, as suggested by Bodhan, is possible for only oval hinge-lid packs.

The present inventors, in a departure from these references, have innovatively and nonobviously pursued a clearly different path resulting in a successful pack concept incorporating a special pack form and the complementary formation of the cigarettes.

The new claim 19 is directed to the pack according to the features a) to c), and additionally introduces the specific details of the collar/inner frame 13. Most important is feature e) which refers to the strip 53 of the collar. This new claim 19 replaces claim 16.

The configuration of the collar/frame 13 is best shown in Fig. 2 and Fig. 9, left. The reason for introducing the additional strip of leg 53 is as follows:

First of all, the group of cigarettes and specifically the row 35 of marginal cigarettes is covered "symmetrically" by the strips or legs of the collar, namely at the front side as well as at the rear side.

It is most important to note that, when closing the lid 12, the leg 53 prevents the side wall 23 of the lid from being introduced between the strip 51 and the group of cigarettes (cigarette block).

* * *

Applicant has explained the deficiencies in the Draghetti/Bohdan combination upon which the Examiner relies, and Focke '691 does not compensate for these deficiencies.

In summary, then, and for the reasons explained above, Applicant respectfully requests the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 112 and 103, and to find the application to be in condition for allowance with claims 12-15 and 17-20; however, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to **call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application.

Applicant files concurrently another Information Disclosure Statement.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,

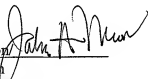
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